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DIGEST OF WATER POLLUTION CONTROL
LEGISLATION: UTAH

Public Health Service
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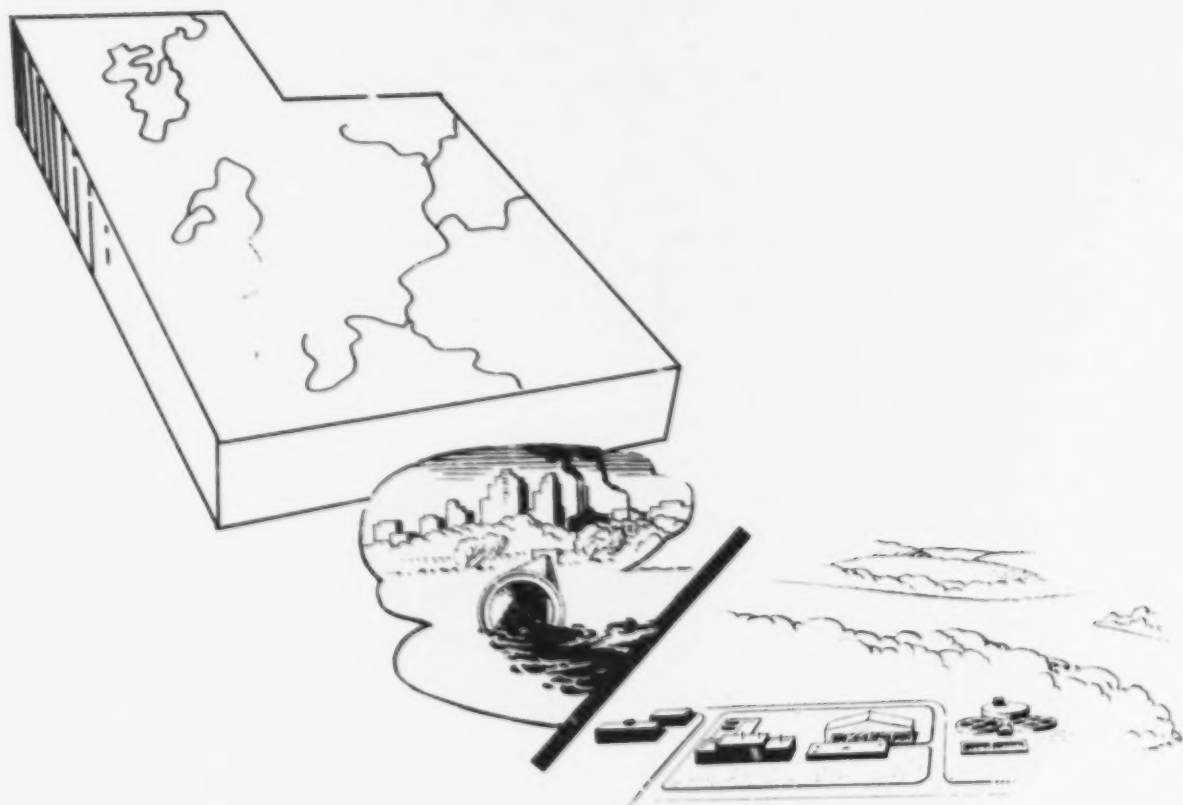
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Digest of WATER POLLUTION CONTROL LEGISLATION ... Utah



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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF UTAH WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

Both the Water Pollution Control Board and the State Department of Health have functions relating to the control of water pollution.

The Board is authorized to develop programs for the prevention, control and abatement of pollution of the waters of the State (1957 Supp., sec. 73-14-4(a)).^{1/}

The functions of the State Department of Health relate primarily to public water supplies and sewage treatment works (1957 Supp., sec. 26-15-4(21)).

"Pollution" is defined in the Act as such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters as will create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses, livestock, wild animals, birds, fish or other aquatic life (1957 Supp., sec. 73-14-2(a)).

The Act defines "waters of the State" as all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are within, flow through, or border upon the State, excepting bodies of water confined to and retained within the limits of private property, which do not constitute a nuisance, a public health hazard, or a menace to fish or wildlife (1957 Supp., sec. 73-14-2(f)).

^{1/} Citations in this digest refer to the Utah Code Annotated (1953), and the 1957 Supplement thereto, unless otherwise indicated.

The State Engineer may require the plugging or filling of any well or tunnel for the purpose of preventing the pollution of any waters whether above or below the ground (Sec. 73-5-9).

The Oil and Gas Conservation Commission is authorized to require, among other things, the drilling, casing and plugging of wells in such manner as to prevent the pollution of fresh water supplies by oil, gas, salt, or brackish water (1957 Supp., sec. 40-6-5(c)(3)).

II. ADMINISTRATIVE ORGANIZATION

A. Water Pollution Control Board

1. Composition and organization

The Board is created within the State Department of Health. It is composed of nine members, namely, the State Health Commissioner, one person representing the mineral, one the food processing, and one other manufacturing industries; one representing municipalities, one agriculture and livestock interests, one fish, wildlife and recreation interests, and two at large, selected from areas of the State affected by water pollution, but neither representing other interests named above; all appointed by the Governor with the consent of the Senate. The terms of members, first appointed, except the State Health Commissioner, expire one on March 1, 1954, and one on March 1 of each subsequent year. The terms of members subsequently appointed are for eight years. The Board annually selects one of its members to serve as Chairman and one as Vice Chairman. The Board is required to hold at least four regular meetings each calendar year; special meetings may be called by the Chairman, and must be called by him upon written request of three or more members. A majority of the members constitutes a quorum. The Board appoints the Chief Sanitary Engineering Officer of the State Health Department as its

Executive Secretary who administers the policies of the Board (1957 Supp., sec. 73-14-3).

2. Powers and duties

a) General authority

The Board is authorized to develop programs for the prevention, control and abatement of pollution of the waters of the State (1957 Supp., sec. 73-14-4(a)).

b) Setting water quality standards and classification of waters

The Board is authorized to adopt standards of water quality and classify the waters of the State. Before the Board does so, or modifies such, it must give public notice of the hearing to be held on such matters. The Board must allow a reasonable time for persons discharging wastes into the waters to comply with its order setting such standards or classification. Any discharge in accord with such classification or standards is not considered to be pollution for the purposes of the Act (1957 Supp., secs. 73-14-4(f), 73-14-6).

c) Issuance of permits and review of plans and specifications

The Board is authorized to issue permits for the discharge of wastes into State waters and for the installation or modification of treatment works. It is empowered to review plans and specifications relative to disposal systems in connection with the issuance of permits (1957 Supp., sec. 73-14-4(i)(j)).

d) Enforcement

Whenever the Board believes there has been a violation of the Act or of any of its orders, it may give written notice to the alleged violator specifying the cause of the complaint. If the matter

complained of is not then corrected, the alleged violator must appear before it and answer the charges. Such notice is served either personally or by registered mail (1957 Supp., sec. 73-14-7(a)(e)).

The Board must afford the alleged violator a fair hearing of the matter. On the basis of the evidence produced at the hearing, the Board makes findings of fact and conclusions of law and enters an order. The order becomes final and binding on all parties within 30 days after service unless prior to such time an application for a rehearing has been filed. If a rehearing is granted, the Board must determine the matter within 30 days after final submission. Failing this, the order involved is to be considered affirmed. The Board may, on the other hand, abrogate or modify its order. After a rehearing, the order becomes final and binding upon all parties after the service thereof unless an appeal is taken to the District Court within 30 days after the date of the Board's final order (1957 Supp., secs. 73-14-7(b), 73-14-11).

Anyone who is denied a permit or whose permit has been revoked or modified must be afforded a hearing upon written application within 30 days after receipt of notice from the Board of such action (1957 Supp., sec. 73-14-7(c)).

Whenever the Governor declares that an emergency exists requiring immediate action, the Board, by a majority vote, may, without notice of hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order becomes effective immediately. Anyone to whom such an order is directed must comply therewith immediately but on application to the Board must be afforded a hearing as soon as possible. On the basis of such hearing the Board can continue such order in effect, revoke or

modify it (1957 Supp., sec. 73-14-7(d)).

Hearings may be conducted by the Board or by an examining officer designated by it. In hearings before the Board, any member has the power to administer oaths, examine witnesses and issue notice of hearings or subpoenas requiring the testimony of witnesses and the production of evidence. In case of a refusal to obey a notice of hearing or subpoena, the District Court, upon application of the Board, can enforce such notice or subpoena. Failure to obey the Court's order is punishable by contempt action (1957 Supp., sec. 73-14-8).

Anyone aggrieved by a final determination of the Board can file a petition in the District Court within 30 days after its issuance. With its answer, the Board certifies and files with the Court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and conclusions of law. The appellant and the Board are deemed to be original parties to the appeal. The Court reviews both the law and the facts and may affirm, reverse or modify the decision of the Board, and may receive additional evidence. Any party aggrieved by the decision of the District Court may appeal further to the Supreme Court (1957 Supp., sec. 73-14-11).

Anyone who violates any of the provisions of, or who fails to perform any duty imposed by the Act or who after notice violates any Board order, is guilty of a misdemeanor and, in addition, may be enjoined from continuing such violation. Each day the violation continues is a separate offense (1957 Supp., sec. 73-14-10(a)). The Attorney General, on request of the Board, brings actions for injunction against anyone violating the provisions of the Act or of any order of the Board. In any action for an injunction hereunder any finding of the Board after hearing or due notice

giving an opportunity to be heard is considered prima facie evidence of the facts found therein (1957 Supp., sec. 73-14-10(b)).

It is unlawful, and a public nuisance, for anyone to cause pollution of any waters of the State (1957 Supp., sec. 73-14-5(a)).

It is unlawful for anyone to carry on any of the following activities without first securing a permit from the Board as may be required by it, for the disposal of all wastes which are or may be discharged thereby into the waters of the State: (1) the construction, modification or operation of any treatment works, (2) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit, (3) the construction, or operation of any establishment, the operation of which would cause an increase in the discharge of wastes into, or would otherwise alter the physical, chemical or biological properties of any waters of the State in any manner not already lawfully authorized, (4) the construction or use of any new outlet for the discharge of any wastes into the waters of the State (1957 Supp., sec. 73-14-5(b)).

e) Conduct of studies, investigations and research

The Board is authorized to participate in, encourage and conduct studies, investigations, research and demonstrations relating to water pollution and its causes (1957 Supp., sec. 73-14-4(d)).

f) Cooperation with other public and private agencies

The Board may advise, consult and cooperate with other agencies of the State, Federal government, other states and interstate agencies, and affected groups, political subdivisions and industries in furtherance of the purposes of the Act. The Board can accept and administer grants from the Federal government and from other sources, for carrying out its purposes (1957 Supp., sec. 73-14-4(b)(c)).

g) Administrative powers

The Board is authorized to adopt and enforce rules and regulations. It may hold hearings, issue orders, permits, subpoenas, administer oaths and examine witnesses (1957 Supp., secs. 73-14-4(g)(h) (j), 73-14-7, 73-14-8). The Board, or its authorized agents, may enter at reasonable times upon private or public property to inspect and investigate conditions relating to pollution of the waters of the State (1957 Supp., sec. 73-14-9). Any authorized representative of the Board may examine records or memoranda pertaining to the operation of disposal systems. The Board may require the maintenance of reasonable records relating to the operation of disposal systems. Copies of such records must be submitted to the Board on request (1957 Supp., sec. 73-14-9).

3. Preservation of existing rights and remedies

The Act is not to be construed as repealing any laws of the State relating to water pollution or conservation, but is to be construed as supplementary thereto, except to the extent that they are in direct conflict (1957 Supp., sec. 73-14-12). Nothing in the Act is to be construed to alter rights of action or remedies in equity, under the common or statutory law, criminal or civil, nor is any provision of the Act, or any act done by virtue thereof, to be construed as estopping the State, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity, under the common or statutory law to suppress nuisances or to abate pollution (1957 Supp., sec. 73-14-13).

4. Statement of policy; severability clause

It is the policy of the State to conserve the waters of the State and to protect, maintain and improve the quality thereof for water supplies, the propagation of wildlife, fish and aquatic life, and for

domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the State without first being given the treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives, and to cooperate with other agencies of the State, of other states, and the Federal government in carrying out these objectives (1957 Supp., sec. 73-14-1).

The Act contains a severability clause (Laws of Utah, 1953, Ch.41, sec. 14).

B. State Department of Health

The Department exercises all the administrative authority heretofore vested in the State Board of Health. It administers and enforces state health laws, regulations and standards (1957 Supp., sec. 26-15-4(1)(3)).

The Department is empowered to hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of its powers and duties (1957 Supp., sec. 26-15-4(20)).

The Department is authorized to establish and enforce minimum sanitary standards for: (1) the collection, treatment and distribution of drinking water including sanitary supervision, regulation of the construction, extension, operation and maintenance of public water supply collection, treatment and distribution systems and approval of plans covering the construction and extension of such systems (2) the quality of water supplies to the public and the quality of the effluent of sewerage system,

sewage treatment plants and trade wastes discharged upon the land or into the surface or ground waters, (3) the collection, treatment and disposal of sewage, industrial wastes and garbage and refuse including sanitary supervision, regulation of the construction, extension, operation and maintenance of sewage collection, treatment and disposal systems, of garbage refuse disposal systems, and approval of plans covering the construction and extension of such systems, (4) the protection of watersheds used for public water supplies, and (5) the prevention of the pollution of any waters (1957 Supp., sec. 26-15-4(21)a(a)(b)(c)(d)(e)).

Nothing in the law giving the Department authority over water pollution extends, supersedes or modifies the authority vested by law in the Water Pollution Control Board (1957 Supp., sec. 26-15-4(21)b).

The Department is not authorized to exercise administrative control over water used solely for irrigation purposes, nor, to promulgate rules and regulations relating to the construction, operation, and maintenance of facilities for conveying such water to the place of use (1957 Supp., sec. 26-15-4.5).

It is unlawful for anyone wilfully to violate, disobey or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule or regulation issued pursuant thereto, Violation carries a fine or imprisonment, or both (1957 Supp., Sec. 26-15-82(1)a,(3)).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

For anyone to use explosives for the purpose of catching or killing fish. Violation is a misdemeanor (1957 Supp., sec. 23-3-7).

For anyone operating a sawmill, smelter or other industry to permit any sawdust, chemicals, tailings or other substances injurious to fish or game to accumulate near or to seep or flow into waters of the State reasonably necessary or desirable for the propagation of fish and game; it is also unlawful for any person to deposit in or near any waters of the State any matter which may tend to pollute any of the reservoirs or streams of the State which are or may be used for culinary purposes. Violation is a misdemeanor (1957 Supp., sec. 23-3-5).

For anyone wilfully to poison any spring, well, stream or reservoir of water. Violators are subject to imprisonment (Sec. 76-42-6).

For anyone to put the carcass of any dead animal or the offal from any slaughter pen, corral or butcher shop into any river, creek, or pond. Violation is a misdemeanor (Sec. 76-43-6).

It is a misdemeanor for anyone (1) to keep animals in a place where the waste or drainage therefrom will drain into any waters used for domestic purposes; or (2) to deposit any offensive rubbish or the carcass of any dead animal where the waste or drainage therefrom will flow directly into any waters used for domestic purposes; or (3) to dip or wash sheep in any stream or maintain a corral for keeping animals therein where the refuse therefrom will drain into waters used by any municipality for domestic purposes (Sec. 76-43-2).

IV. INTERSTATE COMPACTS

Utah is a party to the following compacts:

1. Bear River Compact (1957 Supp., sec. 73-16-1).
2. Columbia River Compact (1957 Supp., sec. 73-17-1).^{2/}

^{2/} This compact has not yet been approved by Congress.